No. 394

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

IN RE: BEN G. LEVY

On Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit

PETITIONER'S MOTION IN OPPOSITION TO FILING OF AMICUS CURIAE BRIEF OF HOUSTON BAR ASSOCIATION

Petitioner's Counsel invariably consents to filing Amicus Curiae Brief, as witness, *Carpenters and Joiners Union of America, Local No. 213, Et Al., v. Ritter's Cafe,* 315 U.S. 722, and other cases, whenever and wherever the record establishes that the one so filing has standing in this Court,

and the Brief constitutes an instrument of unquestioned aid to this Court.

AMERICAN CIVIL LIBERTIES UNION, AND OTHER ORGANIZATIONS, HAVE EARNESTLY REQUESTED PETITIONER TO GIVE CONSENT TO THE FILING OF AMICUS CURIAE BRIEF IN THIS CAUSE. ALL OF THESE REQUESTS, APPARENTLY MADE IN GOOD FAITH, HAVE BEEN DENIED BECAUSE IT WAS FELT THAT SAME WOULD NOT ADD TO THE EDIFICATION OF THIS COURT ON SUCH GRAVE ISSUES, AND THAT PETITIONER DID NOT REQUIRE A RESCUE SQUAD.

PETITIONER SEES NO REASON FOR DEVIATING FROM THIS COURSE IN TREATING THE REQUEST OF HOUSTON BAR ASSOCIATION POSSESSING **NO STANDING IN THIS COURT.**

The Record in *this* case does not show that the authors of the Amicus Curiae Brief, submitted to this Court on March 11; 1955, (two of whom are members of the same law firm as James L. Shepherd, Jr., Esq., who is, and has been for several months, Chairman of the Committee on Admissions in the United States District Court) have any authority to file such Amicus Curiae Brief for the Association.

James L. Shepherd, Jr., Esq., Chairman of this Committee, refuses to file a brief in this matter although served with Petitioner's Brief as manifest of record.

Since Houston Bar Association has *no* standing in this Court, allowance to file such Brief runs counter to the spirit, intent, and purpose of Amicus Curiae Brief.

The Committee on Admissions in the Federal Courts, this area, *appointed by the United States Judges of the Southern District of Texas,* is the *only* agency legally entitled to file a Brief in this Court. It is this Committee which recommended against Petitioner's admission. The judgment of the courts below simply affirmed the action of such Committee. The Houston Bar Association has *never* been a part of this litigation.

* * *

The Amicus Curiae Brief sought to be filed would seem to indicate that its authors have strayed from realities.

It is not believed that they seriously contend that this cause is "moot" inasmuch as the subject matter of this cause is Petitioner's admission to the Bar, and, as such, is patently available for the judgment of this (Supreme) Court to operate on. Quite clearly, Petitioner's right or privilege to renew his application does *not* obviate the question, inasmuch as the United States District Court is presumably free *to renew its refusal to admit.*

This cause cannot properly be considered "moot" until Petitioner is granted admission to practice in the Federal Courts, or, in the alternative, the issues are finally adjudicated by this Court.

In no sense has the vitality of the judgment in this case been dissipated since the controversy confronting the court has *not* ended.

The importance of the Constitutional issues, not the parties, caused entry of this cause into this Court. These important issues did not perish when Petitioner appealed from an adverse judgment. Nor were these grave issues dis-

solved by the cavalier statement that Petitioner might or could re-apply a year later.

The stigma and ugly implications attached to Petitioner by virtue of his exclusion from practice in the United States Courts and the related grave consequences are not dissipated because it is said that he may apply again, without any assurance that the same result will not prevail against him.

Whether this matter is "moot" is quite definitely answered in such cases as *Fiswick v. U. S.*, 329 U.S. 211; *Walling v. Helmerich & Payne, Inc.*, 323 U.S. 37; and *Culver v. City of Warren* (Ohio App.), 83 N.E. 2d 82, 90, 91.

No one carefully eschewing whimsical or irrational considerations in evaluating the claims pressed by Petitioner could conscientiously assert this cause to be "moot".

> "Reliance on the good faith of * * * " an agency "entrusted with the enforcement of appropriate standards for the practice of * * * " law "is not in itself an investiture of arbitrary power offensive to due process." *Barsky v. Board of Regents of University*, 347 U.S. 442, 470.

Likewise, it does not seem inappropriate to state that

> "A license cannot be" denied "because a man is redheaded or because he was divorced, except for a calling, if such there be, for which redheadedness or an unbroken marriage may have some rational bearing." *Barsky v. Board of Regents of University*, 347 U.S. 442, 470.

It is respectfully submitted that the Motion to File the

Amicus Curiae Brief of Houston Bar Association should be, in all things, denied and rejected.

Respectfully submitted,

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